

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

COREY JOHNSON,

Plaintiff,

v.

STATE OF NEVADA DEPT OF PAROLE  
AND PROBATION, *et al.*,

Defendants.

Case No. 2:20-cv-01647-RFB-EJY

SCREENING ORDER

Plaintiff, who is in the custody of the Nevada Department of Corrections (“NDOC”), has submitted a civil rights complaint under 42 U.S.C. § 1983 and has filed two applications to proceed *in forma pauperis* and a petition for a preliminary injunction. (ECF Nos. 1-1, 4, 6, 9.) The Court will screen Plaintiff’s civil rights complaint pursuant to 28 U.S.C. § 1915A.

**I. SCREENING STANDARD**

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged violation was committed by a person acting under color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation Reform Act (PLRA), a federal court must dismiss a prisoner’s claim, if “the allegation of poverty is untrue,” or if the action “is frivolous or malicious, fails to state a

1 claim on which relief may be granted, or seeks monetary relief against a defendant who  
2 is immune from such relief.” 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure  
3 to state a claim upon which relief can be granted is provided for in Federal Rule of Civil  
4 Procedure 12(b)(6), and the court applies the same standard under § 1915 when  
5 reviewing the adequacy of a complaint or an amended complaint. When a court  
6 dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the  
7 complaint with directions as to curing its deficiencies, unless it is clear from the face of  
8 the complaint that the deficiencies could not be cured by amendment. See *Cato v. United*  
9 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

10 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See  
11 *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure  
12 to state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in  
13 support of the claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d  
14 756, 759 (9th Cir. 1999). In making this determination, the court takes as true all  
15 allegations of material fact stated in the complaint, and the court construes them in the  
16 light most favorable to the plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th  
17 Cir. 1996). Allegations of a *pro se* complainant are held to less stringent standards than  
18 formal pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While  
19 the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff  
20 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*,  
21 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is  
22 insufficient. *Id.*

23 Additionally, a reviewing court should “begin by identifying pleadings [allegations]  
24 that, because they are no more than mere conclusions, are not entitled to the assumption  
25 of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can  
26 provide the framework of a complaint, they must be supported with factual allegations.”  
27 *Id.* “When there are well-pleaded factual allegations, a court should assume their veracity  
28 and then determine whether they plausibly give rise to an entitlement to relief.” *Id.*

1 “Determining whether a complaint states a plausible claim for relief . . . [is] a context-  
 2 specific task that requires the reviewing court to draw on its judicial experience and  
 3 common sense.” *Id.*

4 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed  
 5 *sua sponte* if the prisoner’s claims lack an arguable basis either in law or in fact. This  
 6 includes claims based on legal conclusions that are untenable (e.g., claims against  
 7 defendants who are immune from suit or claims of infringement of a legal interest which  
 8 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,  
 9 fantastic or delusional scenarios). See *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989);  
 10 see also *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

## 11 **II. SCREENING OF COMPLAINT**

12 Plaintiff filed the complaint in this action on September 4, 2020. The complaint is  
 13 an exact copy of a complaint that Plaintiff had previously filed on September 2, 2020.  
 14 Compare ECF No. 1-1 with *Johnson v. State of Nevada Dept Parole & Probation*, 2:20-  
 15 CV-01627-APG-VCF at ECF No. 1-1. Plaintiff also filed application to proceed *in forma*  
 16 *pauperis* in both cases.

17 Duplicative litigation by a plaintiff proceeding *in forma pauperis* may be dismissed  
 18 as malicious under 28 U.S.C. § 1915(e). See *Cato v. United States*, 70 F.3d 1103, 1105  
 19 n.2 (9th Cir. 1995) (citing *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir.1988) (holding  
 20 that repetitious litigation of virtually identical causes of action is subject to dismissal as  
 21 malicious)); *Pittman v. Moore*, 980 F.2d 994, 994-95 (5th Cir.1993) (holding that it is  
 22 malicious for a “pauper” to file a lawsuit that duplicates allegations of another pending  
 23 federal lawsuit by the same plaintiff).

24 The complaint in this case is not only similar, but an exact copy of the complaint  
 25 filed in the earlier case. As such, the Court dismisses the complaint as malicious. The  
 26 case is dismissed with prejudice, as amendment would be futile. Plaintiff’s applications  
 27 to proceed *in forma pauperis* (ECF Nos. 4, 6) and his motion for a preliminary injunction  
 28 (ECF No. 9) are denied as moot.

For the foregoing reasons, it is ordered that Plaintiff's applications to proceed *in forma pauperis* (ECF Nos. 4, 6) are denied as moot.

It is further ordered that the Clerk of the Court file the complaint (ECF No. 1-1) and send Plaintiff a courtesy copy of the complaint.

It is further ordered that this Court certifies that any *in forma pauperis* appeal from this order would not be taken “in good faith” under 28 U.S.C. § 1915(a)(3).

It is further ordered that the Clerk of the Court close this case and enter judgment accordingly.

DATED: February 1, 2021.

  
RICHARD F. BOULWARE, II  
United States District Court